

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 561 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?No

2. To be referred to the Reporter or not?
No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

PANKAJKUMAR KANTILAL

Versus

STATE OF GUJARAT

Appearance:

MR KV SHELAT for Petitioners

Mr. S.A. Pandya, APP, for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 24/04/98

ORAL JUDGEMENT

By means of filing this Criminal Revision Application, the petitioners, who are original accused in Criminal M. Case No.1 of 1988, which is re-numbered as Criminal Case No.822 of 1988, pending in the Court of learned Judicial Magistrate (First Class), at Sanand, for the offences punishable under Sections 504 and 506(1) of the Indian Penal Code, have challenged the order passed by the learned Magistrate below application (Exh.32), and to quash the criminal complaint lodged by respondent No.2, on the ground that, though the alleged offence had taken place in the year 1987 and the criminal case was lodged in the year 1988, yet no progress has been made and, in view of the judgment of the Supreme Court in the case of "Common Cause" vs. Union of India, reported in 1997(1) G.L.H. 417, they should be discharged.

Respondent No.2 filed a complaint against the petitioners in the Court of learned Judicial Magistrate (First Class), at Sanand, for the offences punishable under Sections 406, 420, 504, 506(1) of the Indian Penal Code. On perusing the complaint, the learned Magistrate, in exercise of his powers under Section 156(3) of the Code of Criminal Procedure, sent the complaint to the Police Sub-Inspector, Sanand, for investigation. The Investigating Officer, after investigation, filed chargesheet in the Court of learned Judicial Magistrate (First Class), at Sanand, against the petitioners for the offences punishable under Sections 406, 420, 504 and 506(1) of the Indian Penal Code. The petitioners filed application (Exh.29) praying that the dispute involved in the complaint was of civil nature and, therefore, they should be discharged. The learned Judicial Magistrate (First Class), at Sanand, by his judgment an order dated December 13, 1996, below application (Exh.29), discharged the petitioners from the offences under Sections 406 and 420 of the Indian Penal Code. However, the learned Judicial Magistrate has directed that the charge be framed against the petitioners for the offences punishable under Sections 504 and 506(1) of the Indian Penal Code.

It appears from the records and proceedings of

the trial court that the petitioners have filed application (Exh.32) contending, inter alia, that the offence in question had taken place at Memdabad and, therefore, the Anand Court has no jurisdiction to try the offence and, therefore, the petitioners should be discharged. In the said application, the petitioners have also prayed that, as per the judgment of the Supreme Court in "Common Cause" vs. Union of India, reported in AIR 1996 Supreme Court 1619 (= 1997(1) G.L.H. 417), they should be discharged. The learned Magistrate, by his judgment and order dated May 27, 1997, rejected the said application, which has been challenged by the petitioners in this Criminal Revision Application.

Perusing the records and proceedings of Criminal Case No.822 of 1988, it appears that, in the present proceedings, no progress has been made before the trial court. The maximum punishment provided for offence under Section 504 of the Indian Penal Code is two years and fine, whereas the maximum punishment provided for offence under Section 506 of the Indian Penal Code is also two years and fine. Both the cases are triable by the Court of learned Magistrate. The Supreme Court, in the case of Common Cause (supra), has held as under:

"Where the cases pending in Criminal Courts under IPC or any other law for the time being in force pertain to offences which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be, and close such cases."

The guidelines enunciated by the Supreme Court in the case of Common Cause (supra), will squarely apply in the facts of the present case. Though charge-sheet is filed in the year 1988, yet no progress was made, nor charge has been framed against the petitioners and, therefore, they are required to be discharged.

In the result, this Criminal Revision Application is allowed. The petitioners are ordered to be discharged from the offences under Sections 504 and 506(1) of the Indian Penal Code, in Criminal Case No.822 of 1988, pending in the Court of learned Judicial Magistrate (First Class), at Sanand. Criminal Case No.822 of 1988 lodged against the petitioners is ordered to be closed. Rule is made absolute.

(swamy)